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**No. 1050**

**Supreme Court of the United States.**

OCTOBER TERM, 1946.

CHARLES F. CONNORS, TRUSTEE IN BANKRUPTCY OF  
THE AGAWAM RACING AND BREEDERS' ASSOCIATION, INC.,  
*Petitioner,*

*v.*

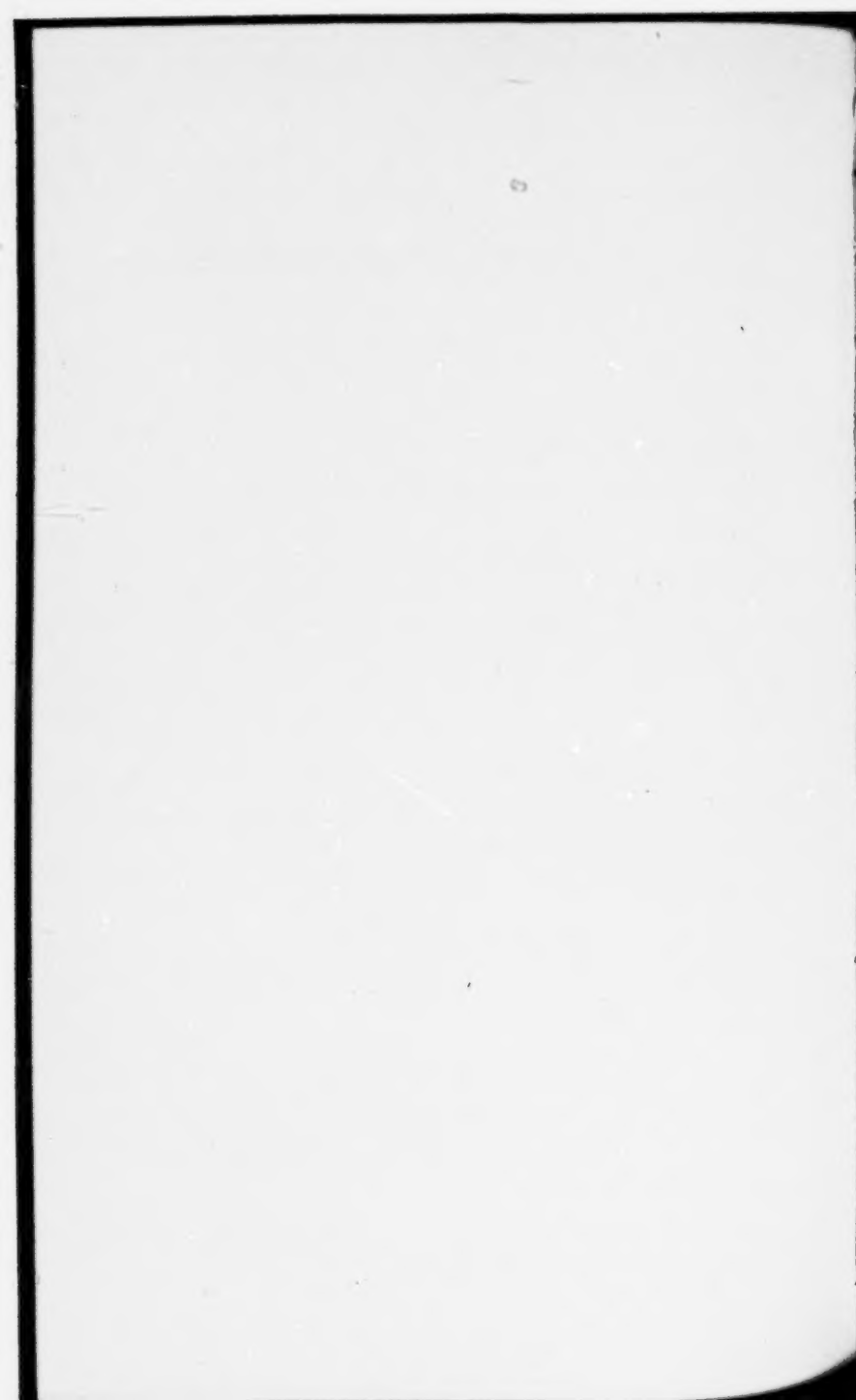
TOWN OF AGAWAM.

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIRST CIRCUIT

AND

PETITIONER'S BRIEF.

✓ DAVID J. COHEN,  
✓ EDWARD J. FLAVIN,  
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## Subject Index.

	Page
<b>Petition</b>	1
Opinions below	2
Jurisdiction	3
Statement	3
Action of the courts below	6
Questions presented	6
Reasons for granting the writ	7
Conclusion	8
 <b>Brief</b>	 9
Opinions below	10
Jurisdiction	10
Facts	10
Judicial proceedings to date	10
I. Reorganization under Section 77B	10
II. Proceedings in the Massachusetts Land Court	11
Errors specified	12
Authorities and argument	12
Gardner v. State of New Jersey, decided on January 20, 1947, warrants the granting of the within petition for a writ of certiorari	12
The paramount jurisdiction of Federal Courts sitting in bankruptcy	13
1. Jurisdiction vested in the Bankruptcy Court upon adjudication	13
2. Treatment and disposition of liens in bankruptcy	17
Conflict of decisions	19
The bankrupt's right to a stay in the Land Court	20
The effect of pending proceedings under Section 77B	21
Conclusion	22

	Page
<b>Appendix</b>	<b>24</b>
<b>Statutes</b>	<b>24</b>
United States Constitution, Article I, Section 8	24
Federal Bankruptcy Act, Section 11 e (11 U.S.C.	
Section 29 e)	24
Section 67 a (1) (11 U.S.C. Chap. 7, Section 107	
a (1))	25
Corporate reorganization	25
Section 77B (o)	26
Massachusetts General Laws (Ter. Ed.) Chapter 60	26
Section 37	26
Section 45	27
Section 53	28
Section 54	29
Section 64	29
Section 65	30
Section 68	30
Section 69	31
Chapter 185	31
Section 1 (b)	31

### Table of Authorities Cited.

#### CASES.

Allard v. Estes, 292 Mass. 187	21
Argyle-Lake Shore Corp., In re, 78 F. (2d) 491	16, 19
Baldwin, Ex parte, 291 U.S. 610	16
Gardner v. State of New Jersey, 91 Law. Ed. 410	
	12, 15, 16, 17, 18, 19
Gross v. Irving Trust Co., 289 U.S. 342	13, 15, 17
Hotel Charles Co., In re, 12 F. Supp. 734 (aff. 84 F.	
(2d) 589)	20
Isaacs v. Hobbs Tie & Timber Co., 282 U.S. 734	15, 16, 17
Meyer v. Fleming, 90 Law. Ed. 423	18

	Page
Meyer v. Kenmore Granville Hotel Co., 297 U.S. 160	21
Pickens v. Roy, 187 U.S. 177	18, 19
Robinson v. Trustees of N.Y., N.H. & H. R.R., 318	
Mass. 121	17
Steelman v. All Continent Corp., 301 U.S. 278	16
Straton v. New, 283 U.S. 318	16, 18, 19
Van Huffel v. Harkelrode, 284 U.S. 225	13, 15

STATUTES.

Judicial Code, sec. 240 (a), as amended by Act of Feb. 13, 1925	10
Bankruptcy Act	
Sec. 11 e (11 U.S.C. sec. 29 e)	20
Sec. 67 a (1)	18
Sec. 77A	18
Sec. 77B	10, 18, 21
Mass. Gen. Laws (Ter. Ed.) c. 60, sec. 45, as amend- ed by St. 1938, c. 339, sec. 1	11
Mass. Gen. Laws (Ter. Ed.) c. 60, sec. 64	11



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THE AGAWAM RACING AND BREEDERS' ASSOCIATION, INC.,  
*Petitioner,*

*v.*

TOWN OF AGAWAM.

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PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIRST CIRCUIT.

This petition is brought to avoid a forfeiture. The Referee  
in Bankruptcy and the Judge of the District Court who  
affirmed his orders have given full protection to every legal,  
equitable and moral right possessed by the Town of Agawam.

Nevertheless, the Circuit Court of Appeals has reversed the lower Court. We respectfully submit that this reversal is the result of a misconception of the law. If this reversal stands, it will give the Town of Agawam many thousands of dollars in excess of its lawful taxes, with all interest and penalties added. It will strip the creditors of this bankrupt of their sole asset. No court of equity can justify

such a result. There is something radically wrong when the Circuit Court of Appeals feels obliged to say:

**"This Court is impressed by the apparent inequity of this result for which the Town of Agawam contends. The general creditors lose what may be the sole substantial asset of the bankrupt. The Town acquires property presumably of a value in excess of its original tax claim. We, however, consider this result unavoidable on the basis of the law as we understand it" (R. p. 96).**

The petitioner, Charles F. Connors, is the trustee in bankruptcy of the Agawam Racing and Breeders' Association, Inc., duly appointed and qualified as such by the United States District Court for the District of Massachusetts sitting in bankruptcy. He prays that a writ of certiorari issue to review a judgment of the Circuit Court of Appeals for the First Circuit entered in the above case on January 7, 1947 (R. p. 98), reversing a judgment of the District Court of the United States for the District of Massachusetts (R. pp. 41-42), which affirmed two orders of Hon. Arthur Black, Referee in Bankruptcy (R. pp. 39-40).

### **Opinions Below.**

The opinion of the Circuit Court of Appeals (R. pp. 88-97) was filed on January 7, 1947, and is not yet reported. The opinion of the District Court Judge is printed in the record at page 42 and is reported in 65 F. Supp. 755. The findings of the Referee are in the record at pages 13 to 20, inclusive, and his opinion and order are at pages 20 to 24, inclusive.



### **Jurisdiction.**

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code; 28 U.S.C. Sec. 347 (a), as amended by the Act of February 13, 1925. The petitioner's motion to stay the mandate was allowed on January 15, 1947 (R. p. 98).

### **Statement.**

The Agawam Racing and Breeders' Association, Inc., was organized as a Massachusetts business corporation for the purpose of conducting a pari-mutuel horse racing establishment in the Town of Agawam, located about 6 miles northwest of Springfield, Massachusetts. Due to financial burdens, on December 23, 1935, the corporation filed a petition for reorganization under Section 77B of the Federal Bankruptcy Act. The Town of Agawam appeared in those proceedings. The District Court at Boston entered an order confirming the debtor's plan of reorganization on December 22, 1937, but no final decree was ever entered terminating the proceedings.

In the year 1938 the Association conducted its last annual racing meet, and in the fall of that year the voters of Hampden County voted to terminate horse racing in that county and the racing plant, consisting of three parcels comprising 342 acres of land with valuable buildings and grandstands thereon, has remained idle and inactive ever since. The Association has at all times remained in actual physical custody and possession of the premises (R. p. 14, No. 4).

The assessors of the Town valued the land and buildings in the year 1938 at \$500,000, and thereafter for the next three years at substantially the same figure, in spite of the

fact that the plant remained closed and never operated after the meet of 1938 (R. pp. 15; 67).

With no operating income and faced with an oppressive tax burden, the Racing Association defaulted in payment of the 1938 real estate tax, and on August 23, 1939, the Tax Collector gave a deed to the Town for non-payment thereof (R. p. 50). On November 26, 1941 (after lapse of two years from delivery of deed as required by statute), the Town of Agawam filed petitions in the Land Court of the Commonwealth of Massachusetts to secure decrees foreclosing the Association's statutory right of redemption.

By the tax deed the Town acquired a form of title which it held merely as security for the unpaid taxes; title would only become absolute in the Town after foreclosure of the debtor's right of redemption by appropriate decree signed and entered in the proceedings instituted in the Land Court. (See Massachusetts Statutes quoted foot of opinion of Circuit Court of Appeals, R. p. 89, and appendix to our brief herewith.)

Hearings on the foreclosure petitions were adjourned from time to time, and by stipulation and order of the Land Court the time to redeem was also extended during which time the Association was striving to compromise with the Town and its officials the burdensome tax liability levied against it. Finally the matter was set down for entry of the final decree at 12 o'clock noon on July 14, 1944. In a last effort to protect the creditors and bondholders a voluntary petition in bankruptcy was filed in Boston on the same day at 9.50 a.m., and the Court forthwith entered an order of adjudication and referred the matter to the local Referee in Bankruptcy.

In recognition of judicial courtesy, and to avoid collision with the State Court, immediately upon adjudication the Referee notified the Judge of the Land Court and counsel

to the Town thereof by delivery of a letter seasonably requesting a brief respite in order that the rights of all parties might be considered and protected (R. pp. 48-49). The Judge of the Land Court, admittedly aware of the pendency of the bankruptcy and appreciating the rights of the Association had passed under the supervision of the Bankruptcy Court (R. p. 55), nevertheless proceeded to hear the parties and allowed the motion for a decree on July 14th; the decree was not entered until July 21, 1944 (R. pp. 53-54).

In the meantime a Receiver was appointed by the Referee in Bankruptcy. After notice to all parties, on July 19, 1944, the Referee enjoined and restrained the Town and its officers from proceeding to secure the entry of a final decree in the Land Court, and further enjoined them from transferring or dealing with the real estate (R. pp. 56-57). On the same day the Receiver filed in the Land Court a notice of adjudication and motion to stay proceedings therein. This was heard on July 21, 1944, and after denial thereof, over the protest of the Receiver and his counsel, the Land Court Judge on the same day signed and entered the decree purportedly foreclosing the right of redemption. Thus, it is respectfully submitted, the Land Court attempted to exterminate all rights of redemption and declare a complete forfeiture in favor of the Town while the property, or in any event the right of redemption, was actually under the paramount jurisdiction and protection of the Federal Court.

There is a valuable equity in the real estate above the Town's claim for unpaid taxes (R. pp. 31-32; 69) which the Bankruptcy Court is striving to protect and preserve for creditors of the bankrupt.

### **Action of the Courts Below.**

Following the repudiation by the Town of a formal compromise agreement which had been approved at a town meeting (R. p. 18; Opinions of District Court, R. p. 45, and C.C.A., R. pp. 90-91) on October 2, 1945, the Trustee filed a petition to sell the racing plant free of liens, and the Referee entered an order thereon allowing the same, with a proviso that the sale must be for a sum not less than the amount of taxes overdue, and any lien which the Town had was to be considered as transferred to the proceeds of sale (R. p. 24). The Referee also denied a motion to vacate the restraining order previously issued against the Town and its officials on July 19, 1944. These orders were affirmed by the District Court (R. pp. 41-42).

The Circuit Court of Appeals reversed the judgment of the District Court affirming these orders (R. p. 98).

### **Questions Presented.**

1. Did the Circuit Court of Appeals correctly rule that the Federal Court did not have paramount jurisdiction, upon an adjudication in bankruptcy, to assume supervision and control of all property and property rights possessed by or belonging to the bankrupt?

2. Did the Circuit Court of Appeals correctly rule that even after an adjudication in bankruptcy the taxpayer's right of redemption "which vested in the trustee in bankruptcy upon the filing of the petition" (R. pp. 93-94) remained subject to the sole and exclusive jurisdiction and control of the Massachusetts Land Court?

3. Did the Circuit Court of Appeals err in failing to recognize and apply the principle that the Bankruptcy Court has jurisdiction to ascertain the validity and extent

of all liens and to determine the method of their liquidation?

4. Did the Circuit Court of Appeals correctly conclude (R. p. 97) that the Referee in Bankruptcy lacked the authority to issue the restraining order against the Town of Agawam and its officials and to order a sale of the racing plant free and clear of all liens?

5. Did the failure or refusal of the Massachusetts Land Court to grant a respite of at least sixty days to the bankruptcy estate violate the provisions of Section 11 e of the Bankruptcy Act and thus render the subsequent decree of foreclosure entered on July 21, 1944, null and void?

6. Did the pendency of the reorganization proceedings under Section 77B of the Bankruptcy Act at the time the Town of Agawam filed its petition to foreclose the debtor's right of redemption deprive the State Land Court of jurisdiction to entertain such a proceeding?

### Reasons for Granting the Writ.

The petitioner respectfully urges that the record in the instant case and the decision of the Circuit Court of Appeals for the First Circuit warrant the granting of a writ of certiorari because—

1. The opinion and judgment of the Circuit Court of Appeals in the instant case are at great variance with the law established in *Van Huffel v. Harkelrode*, 284 U.S. 225. This doctrine is clearly reviewed and affirmed by Mr. Justice Douglas in *Gardner, Trustee, v. State of New Jersey*, decided by this Court on January 20, 1947 (now reported in 91 Law. Ed. 410), and the authorities therein cited.

2. If permitted to stand, the ruling in the instant case will cause hopeless chaos, confusion and uncertainty in the administration of the Federal Bankruptcy Act.

3. There is a conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in the case of *In re Argyle-Lake Shore Corp.*, 78 F. (2d) 491, dealing with substantially the same matter.

4. A serious conflict of jurisdiction between State and Federal Courts is presented concerning the paramount jurisdiction of the United States District Court sitting in bankruptcy.

#### **Conclusion.**

For the foregoing reasons it is respectfully submitted that the within petition should be granted.

**CHARLES F. CONNORS, TRUSTEE IN  
BANKRUPTCY OF AGAWAM RACING AND  
BREEDERS' ASSOCIATION, INC.,**

**By his Attorneys,**

**DAVID J. COHEN,  
EDWARD J. FLAVIN.**

# Supreme Court of the United States.

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TOWN OF AGAWAM.

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## BRIEF FOR CHARLES F. CONNORS.

This case presents a conflict between the Federal Court sitting in bankruptcy and a State Court seeking to foreclose the bankrupt's right to redeem its real estate after the bankrupt's adjudication and full notice thereof to the State Court.

The issues involved in this appeal merit the careful consideration of this Court because they affect the fundamental concept of bankruptcy administration.

It is important, of course, that justice be done to this particular bankrupt, and its creditors, but it is far more important that the confusion created by the decision of the Circuit Court of Appeals in this case be dispelled.

It is vital that this Court solve the conflict between the various Circuit Courts of Appeals and speak the final word.

### **Opinions Below.**

The opinion of the Circuit Court of Appeals is not yet reported; it appears on pages 88 to 97, inclusive, of the record accompanying this petition. The opinion of Judge Sweeney sitting in the District Court is reported in 65 F. Supp. 755, and at pages 42-48 of the record, and the opinion of the Referee in Bankruptcy is at pages 20 to 24 of the record.

### **Jurisdiction.**

The judgment of the Circuit Court of Appeals was entered January 7, 1947 (R. p. 98). This is a petition for the issuance by the Supreme Court of the United States of a writ of certiorari to the Circuit Court of Appeals for the First Circuit under the authority of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

### **Facts.**

The facts are set forth in the petition herewith and are stated by the Referee (R. pp. 13-20), by Judge Sweeney (R. pp. 42-48), and again by the Circuit Court of Appeals (R. pp. 88-97). They are not in dispute.

### **Judicial Proceedings to Date.**

#### **I.**

#### **REORGANIZATION UNDER SECTION 77B.**

On December 23, 1935, Agawam Racing Association filed a petition for reorganization under Section 77B in the District Court at Boston. This was four years before the



Town of Agawam received its first tax collector's deed and six years before the Town moved to foreclose the bankrupt's right of redemption.

*No final decree was ever entered in these proceedings. They are still pending.*

## II.

### PROCEEDINGS IN THE MASSACHUSETTS LAND COURT.

In August, 1939, the Town of Agawam took from the Collector of Taxes a so-called tax collector's deed, which under Massachusetts law is merely "security for the repayment of the purchase price, with all intervening costs . . ." General Laws, c. 60, sec. 45, as amended by St. 1938, c. 339, sec. 1 (App. p. 27).

A little more than two years later the Town, in compliance with the Massachusetts law, filed a petition in the Land Court to foreclose the taxpayer's right of redemption. General Laws, c. 60, sec. 64 (App. p. 29). Proceedings under this petition to foreclose the right of redemption were still pending on July 14, 1944, when the Agawam Race Track was adjudicated a bankrupt. On that date, namely, July 14, 1944, and before counsel for the Town could even move for a final decree in the foreclosure proceedings, the Town and the Land Court were notified by the Referee in Bankruptcy that the Racing Association had been adjudicated a bankrupt.

On July 19, 1944, when there had still been no entry of a final decree, counsel for the Receiver of the Racing Association filed a formal notice of adjudication and a petition to stay proceedings. Motion to stay proceedings was fully argued on July 21st. Final decree was entered by the Land Court subsequent to the full and formal argument on the petition to stay proceedings.

### Errors Specified.

The petitioner has submitted his specifications of the errors committed by the Circuit Court of Appeals in the form of six questions, contained on pages 6 to 7 of his petition. These are not all treated herein under separate headings, because certain of the principles involved are intermingled. However, in our argument and discussion of authorities we believe we discuss all of the questions raised by the petition.

### Authorities and Argument.

GARDNER V. STATE OF NEW JERSEY, DECIDED ON JANUARY 20, 1947, WARRANTS THE GRANTING OF THE WITHIN PETITION FOR A WRIT OF CERTIORARI.

Two weeks after judgment was entered by the Circuit Court of Appeals in the case at bar, this Court delivered its unanimous opinion in the case of *Gardner v. State of New Jersey*, now reported in 91 Law. Ed. 410. The contention made therein by the State of New Jersey and that made here by the Town of Agawam are very similar, namely, that the lien asserted for unpaid taxes is not subject to the paramount jurisdictional supervision of the Federal Court of Bankruptcy.

This fundamental mistake in respect to the jurisdiction of the Federal Court is due to a failure "to recognize historic bankruptcy powers" which Mr. Justice Douglas pointed out at page 418 "are part of the arsenal of authority granted the Reorganization Court under Sec. 77."

The Court reviewed and discussed many of the cases cited by the Circuit Court of Appeals in the instant case and ruled not only that the bankrupt's equity is *in custodia legis*, but that the entire property itself as well as liens

should be supervised and administered in the Bankruptcy Court. It appears to us that the Court reached that conclusion, not only on fundamental concepts of equitable principles and just distribution of assets, but on the recognized authorities and practice of previously decided cases.

The order of the Referee directing the sale of the property free of liens, but for a sum not less than the full tax claimed, with the requirement that the lien be transferred to the proceeds of sale, and the affirmance thereof by the District Court was in accordance with long-established and accepted practice in this District, and approved by the Court in the notable case of *Van Huffel v. Harkelrode*, 284 U.S. 225.

If the ruling of the Circuit Court of Appeals in the instant case stands, the result is a definite undermining and weakening of the position the Federal Courts must take when they collide with State tribunals. It will also uproot the uniformly established practice and create uncertainty and chaos in the administration of bankruptcy affairs, particularly where liens of municipalities are involved.

#### THE PARAMOUNT JURISDICTION OF FEDERAL COURTS SITTING IN BANKRUPTCY.

##### 1. *Jurisdiction Vested in the Bankruptcy Court upon Adjudication.*

What passed into the protective custody and jurisdiction of the Bankruptcy Court by the filing of a voluntary petition in bankruptcy and adjudication on July 14, 1944? We submit any possible misunderstanding of this problem was set at rest by the Court in the case of *Gross v. Irving Trust Co.*, 289 U.S. 342, decided in 1933. There the distinction between matters wherein the jurisdiction of the Bankruptcy Court is paramount, as distinguished from those in

which jurisdiction is concurrent with some other tribunal, is clearly denoted. It is fundamental that the Bankruptcy Court's jurisdiction is paramount where creditors must be protected, thus preventing the working of a forfeiture and the securing of an unfair advantage (by the Town of Agawam) to the detriment of unsecured interests. At page 344 the Court said:

"Upon adjudication of bankruptcy, title to all the property of the bankrupt, wherever situated, vests in the trustee as of the date of filing the petition in bankruptcy. The bankruptcy court has exclusive jurisdiction, and that court's possession and control of the estate cannot be affected by proceedings *in other courts*, state or federal. . . . Such jurisdiction having attached, control of the administration of the estate cannot be surrendered even by the court itself. . . . 'The filing of the petition is a caveat to all the world and in fact an attachment and an injunction.' " (*Italics ours.*)

The Circuit Court of Appeals in the instant case conceded (R. pp. 93-94):

"That the Racing Association's right of redemption is a transferable interest in land which vested in the trustee in bankruptcy upon the filing of the petition . . ."

The Court then, by an improper interpretation of the Massachusetts law relating to the method and means whereby the taxpayer's right of redemption is terminated and destroyed, concluded that this interest came within the exclusive jurisdiction of the Land Court by virtue of the mere filing of the petition to foreclose the right of redemption (R. p. 94); that thereby the State Court acquired con-

structive possession and jurisdiction of the property prior to bankruptcy, even though it was conceded on all sides that the bankrupt at all times remained in actual physical possession of the real estate.

The question before the Circuit Court of Appeals was not the interpretation of substantive Massachusetts law relating to Land Court procedure, but, we submit, solely one of jurisdiction.

Under the superior jurisdiction of the Bankruptcy Court, the Town of Agawam must be treated fairly; but it must secure no unfair advantage at the expense of unsecured creditors. No forfeiture can be permitted. The proceedings to sell the property free of liens with the provision that they shall attach to the proceeds of the sale, at a price in no event less than the tax claim, as ordered by the Referee, was proof of the equitable treatment to which the Town was entitled and would receive from the Referee in Bankruptcy. This is the procedure approved by *Van Huffel v. Harkelrode*, 284 U.S. 225.

The case of *Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 724, 737-738 (cited by the Court in *Gardner v. New Jersey*, at page 416, and in the *Gross* case in 289 U.S. 342), involved a challenge of jurisdiction by a trustee in bankruptcy of proceedings brought in a State Court to foreclose a mortgage on property owned by the bankrupt. This Court reiterated that title to, and constructive possession of, assets belonging to a bankrupt passed into the control of the Bankruptcy Court upon adjudication. The Court points out at page 737 that in such circumstances the Bankruptcy Court has exclusive jurisdiction to deal with the property of the bankrupt estate and may order a sale of real estate, even that lying outside the district; that once jurisdiction attaches, the Court's possession cannot be affected by actions brought in other Courts. Then, at the top of page

738, the Court makes a decisive statement (repeated and emphasized by Mr. Justice Douglas in *Gardner v. New Jersey*, at page 416), which sustains and warrants the procedure adopted by the Referee and Judge below to sell the property free of liens. The Court states:

“Thus, while valid liens existing at the time of the commencement of a bankruptcy proceeding are preserved, it is solely within the power of a court of bankruptcy to ascertain their validity and amount and to decree the method of their liquidation.”

The Referee in Bankruptcy was right in enjoining the Town and its officials from proceeding in the Land Court, for that is the very means provided for placing under the protective jurisdiction of the Bankruptcy Court property and assets for equitable liquidation and administration, even extending to questions respecting adjudication of title. This doctrine was recognized in *Ex Parte Baldwin*, 291 U.S. 610, where Judge Brandeis, speaking for the Court, said at page 615:

“All property in the possession of a bankrupt of which he claims the ownership passes, upon the filing of a petition in bankruptcy, into the custody of the court of bankruptcy. To protect its jurisdiction from interference, that court may issue an injunction.”

To the same effect are—

*Gardner v. New Jersey* (U.S. S.C. Jan. 20, 1947),  
91 Law. Ed. 410.

*Steelman v. All Continent Corp.*, 301 U.S. 278.

*Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734.

*Straton v. New*, 283 U.S. 318.

*In re Argyle-Lake Shore Corp.*, 78 F. (2d) 491.

The Massachusetts Supreme Judicial Court adopted the doctrine of *Gross v. Irving Trust Co.* and *Isaacs v. Hobbs Tie & Timber Co.* in the very recent case of *Robinson v. Trustees of N.Y., N.H. & H. R.R.*, 318 Mass. 121 (1945). There the Court said at page 125:

“Substantive rights created by an act of Congress cannot be destroyed by some procedural step in accordance with the practice adopted in a State court”—

and further stated at page 131:

“Doubtless, the court in which the reorganization proceedings were pending had acquired exclusive jurisdiction over the debtor and its property and could prevent interference with the court’s possession of the property by enjoining competing or conflicting proceedings in other courts.”

## 2. Treatment and Disposition of Liens in Bankruptcy.

We can only urgently suggest that the traditional doctrine and principle in bankruptcy recognized in *Gardner v. New Jersey* is decisive of our position, namely:

“While valid liens existing at the commencement of bankruptcy proceedings have always been preserved, it has long been a function of the bankruptcy court to ascertain their validity and extent and to determine the method of their liquidation . . .”

The Court then unqualifiedly points out, at page 416: “the authority of the [bankruptcy] court to deal with the lien of a State has long been recognized,” and at page 417 that—

“If the reorganization court lacked the power to deal with tax liens of a State, the assertion by a State

of a lien would pull out chunks of an estate from the reorganization court and transfer a part of the struggle over the corpus into tax bureaus and other state tribunals."

Cases dealing with reorganization proceedings under Section 77A or Section 77B, wherein this principle is involved, are, of course, applicable to proceedings in straight bankruptcy. Mr. Justice Douglas in the *Gardner* case cites many authorities in support of this conclusion. The Court further pointed out in *Meyer v. Fleming*, decided on February 4, 1946, and reported in 90 Law. Ed. 423, that the exclusive jurisdiction granted the Reorganization Court under Section 77A is that which Bankruptcy Courts have customarily possessed, and at page 424 that—

"... the title and powers of the trustee are similar to those possessed by trustees in ordinary bankruptcy proceedings and he acquires title to all assets of whatsoever kind or nature."

Under Section 67 a (1) of the Bankruptcy Act (App. p. 25) we believe that only those liens acquired by creditors by means of an attachment, a levy or a judgment or decree are saved from subsequent proceedings in bankruptcy, but, nevertheless, in spite of this statutory provision the Bankruptcy Court is empowered to ascertain their validity and supervise their liquidation.

Throughout the proceedings herein, the Town of Agawam has strongly relied on the cases of *Straton v. New*, 283 U.S. 318, and *Pickens v. Roy*, 187 U.S. 177. The Court below placed reliance on *Straton v. New* in reaching its admittedly unjust conclusion (R. pp. 92-93). We believe these cases are readily distinguishable. In each, creditors with good attachments had obtained judgments long prior



to bankruptcy, and State Commissioners had been appointed to sell the properties in settlement of the outstanding judgments. The *Straton* and *Pickens* cases merely hold that bankruptcy cannot affect a good judgment obtained more than four months prior to adjudication, and will not interfere with a State Court which has instituted proceedings to realize on that judgment. It must be assumed that any surplus received, as a result of such State Court sale, would be turned over to the judgment debtor, or to his trustee in bankruptcy. There is nothing, express or implied, in these cases which would justify the forfeiture of any such surplus.

*Straton v. New* never challenged the right of the Bankruptcy Court, as stated at page 321, to—

“inquire into the validity of liens, marshal them, and control their enforcement and liquidation”—

and the Court in *Gardner v. New Jersey* cited it, at page 416, as upholding this principle.

In the latter case Mr. Justice Douglas details in four comprehensive paragraphs (pp. 418-419) a variety of reasons why, upon the intervention of bankruptcy, the Federal Courts possess paramount jurisdiction to deal with private and municipal liens and determine the destiny of bankruptcy estates.

### **Conflict of Decisions.**

We submit the decision of the First Circuit Court of Appeals in the instant case is in conflict with *In re Argyle-Lake Shore Corp.*, 78 F. (2d) 491, decided by the Seventh Circuit in 1935. In the latter case the Court insisted (p. 494) the right of redemption was an asset of the bankruptcy estate which it would protect by injunction to the

end that "equity might be done to all interested parties." The Circuit Court in the case at bar ruled that this right of redemption was *at all times* under the exclusive jurisdiction of the Land Court (R. p. 94). This was an obvious mistake.

We venture to suggest that the learned opinion of Judge Brewster, a Massachusetts lawyer of wide experience, sitting in the District Court in the case of *In re Hotel Charles Co.*, 12 F. Supp. 734 (affirmed in 84 F. (2d) 589), indicated the true nature of this right of redemption and its appropriate treatment in bankruptcy when he said at page 736:

"Whether we approach the matter from the viewpoint of the debtor, as an owner of a right to redeem, or from the viewpoint of the city as a creditor with a lien upon the real estate, we reach the same ultimate result. In order to determine the extent and value of the right or the extent of the incumbrance, there must be inherent in the court authority to test the validity and quantity of the right of [redemption] or the lien."

### **The Bankrupt's Right to a Stay in the Land Court.**

Section 11 e (11 U.S.C. Sec. 29 e), 1940, of the Bankruptcy Act (App. p. 24), entitled the bankruptcy estate to a respite of not less than sixty days. In defiance of this, after informal notice from the Referee in Bankruptcy on July 14, 1944, and the filing of a formal notice of adjudication and request for a stay of proceedings on July 19, 1944, and after formal argument by representatives of the Bankruptcy Court, the Land Court entered its decree on July 21, 1944. The Land Court erred in ignoring the mandate of Section 11 e and the request of the representatives of the Bankruptcy Court.

When the notice of adjudication and petition to stay were formally of record in the Land Court on July 19, 1944, then the principle recognized by the Massachusetts Supreme Judicial Court in such cases should have been applied as in *Allard v. Estes*, 292 Mass. 187, where the Court said at page 193:

“When application is properly made for a stay of proceedings in the State court, it is the duty of that court to act in the enforcement of the provisions of the bankruptcy act. . . . ‘Upon the application of the bankrupt to the court, State or national, in which the suit is pending, it is the duty of that court to stay the proceedings. . . .’ ”

#### **The Effect of Pending Proceedings under Section 77B.**

We agree with Mr. Justice Sweeney of the District Court that in this case the Federal Court has paramount jurisdiction. We believe that is the one vital issue in this case and that the District Court decided it right, but since the question of a prior proceeding under Section 77B has been raised, a brief comment is appropriate.

This bankrupt filed a petition for reorganization under Section 77B of the Bankruptcy Act on December 23, 1935, long before the Town ever moved to collect its tax. A plan of reorganization was confirmed on December 27, 1937, but no final decree was ever entered. The failure to enter a final decree leaves the reorganization proceedings still pending and leaves the property of the bankrupt under the jurisdiction of the Federal Court. See *Meyer v. Kenmore Granville Hotel Co.*, 297 U.S. 160, and particularly the opinion of Chief Justice Stone at page 166, as follows:

“‘upon the termination of the proceedings a final decree shall be entered,’ which ‘shall discharge the

debtor from its debts and liabilities.' Discharge is effected not by confirmation of the plan but by the final decree.

"Confirmation of a plan of reorganization is but a step in the administration of the debtor's estate . . ."

We have felt throughout that the case should be decided on the broad ground of paramount jurisdiction, as Mr. Justice Sweeney decided it.

We certainly feel that the interests of the bar and the public will best be served by a final decision of the jurisdictional question, but if this Court should disagree with Mr. Justice Sweeney on the question of jurisdiction, we must, for the protection of this bankrupt's creditors, insist that the jurisdiction of the Federal Court acquired by reorganization proceedings has never been terminated and has at all times excluded any possible jurisdiction by the Massachusetts Land Court.

### **Conclusion.**

This is a proceeding in equity. The bankrupt, when adjudicated, had the right to redeem its property from the foreclosure proceedings then pending in the State Land Court.

The right of redemption was of great value and upon adjudication passed into the custody of the Bankruptcy Court.

Until the right of redemption is foreclosed, the Town in effect is only a lienor and as such should not be allowed to collect by way of forfeiture in excess of its tax claim. The Referee in Bankruptcy and the Judge of the District Court have fully and adequately protected this Town.

No valid reason appears why a Federal Court should surrender its jurisdiction to the State tribunal and thus work a forfeiture and forever bar and exclude unsecured claimants.

We respectfully urge, therefore, that the writ of certiorari ought to issue.

CHARLES F. CONNORS, TRUSTEE IN  
BANKRUPTCY OF AGAWAM RACING  
AND BREEDERS' ASSOCIATION, INC.,  
By his Attorneys,  
DAVID J. COHEN,  
EDWARD J. FLAVIN.

**Appendix.****Statutes.****UNITED STATES CONSTITUTION.**

ARTICLE I, SECTION 8. "The Congress shall have Power . . . To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."

**FEDERAL BANKRUPTCY ACT.**

Section 11 e (11 U.S.C. Sec. 29 e). "A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for presenting or filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in such proceeding or by applicable Federal or State law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case such period had not expired at the date of the filing of the petition in bankruptcy, the receiver or trustee of the bankrupt may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the bankrupt, within a period of sixty days subsequent to the date of adjudication or within such further period as may be permitted by the agreement, or in the proceeding or by applicable Federal or State law, as the case may be."

Section 67 a (1) (11 U.S.C. Chap. 7, Sec. 107 a (1)).  
 "Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition in bankruptcy or of an original petition under chapter X, XI, XII, or XIII of this Act by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of the Act. *Provided, however,* That if such person is not finally adjudged a bankrupt in any proceeding under this Act and if no arrangement or plan is proposed and confirmed, such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided."

### *Corporate Reorganization.*

The sections hereinafter referred to and quoted are those in effect when the reorganization petition was filed in 1935 and when the order of confirmation was entered on December 27, 1937.

Section 77B (h), referring to the confirmation of a plan, stated that, where property remained in possession of a debtor, it—

" . . . shall be free and clear of all claims of the debtor, its stockholders and creditors . . . "

The provisions of the Act respecting the entry of a final decree and its effect provided in Section 77B (h) that—

"Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, by way of injunction or otherwise, and closing

the case. Such final decree shall discharge the debtor from its debts and liabilities, and shall terminate and end all rights and interests of its stockholders, except as provided in the plan or as may be reserved as aforesaid."

Section 77B (o):

"In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition or answer was approved."

MASSACHUSETTS GENERAL LAWS (TER. ED.) CHAPTER 60.

"SECTION 37. Taxes assessed upon land, including those assessed under sections twelve, thirteen and fourteen of chapter fifty-nine, shall with all incidental charges and fees be a lien thereon from January first in the year of assessment. Except as provided in section sixty-one, such lien shall terminate at the expiration of two years from October first in said year, if the estate has in the meantime been alienated and the instrument alienating the same has been recorded, otherwise it shall continue until a recorded alienation thereof; but if while such lien is in force a tax sale or taking has been made, and the deed or instrument of taking has been duly recorded within sixty days, but the sale or taking is invalid by reason of any error or irregularity in the proceedings subsequent to the assessment, the lien and also the lien or liens for any subsequent taxes or



charges which have been added to the tax title account under authority of section sixty-one shall continue for ninety days after a surrender and discharge under section forty-six or a release, notice or disclaimer under sections eighty-two to eighty-four, inclusive, has been duly recorded, or for ninety days after the sale or taking has been finally adjudged invalid by a court of competent jurisdiction, and if while a lien established by this section is in force the owner of the real estate on which it attaches is adjudicated bankrupt, the lien shall continue for six months after final termination of the bankruptcy proceedings, subject, however, to any lawful action under any paramount authority conferred by the bankruptcy laws of the United States. Said taxes, if unpaid for fourteen days after demand therefor, may, with said charges and fees, be levied by sale of the real estate, if the lien or liens thereon have not terminated. No tax title and no item included in a tax title account shall be held to be invalid by reason of any error or irregularity which is neither substantial nor misleading, whether such error or irregularity occurs in the proceedings of the collector or the assessors or in the proceedings of any other official or officials charged with duties in connection with the establishment of such tax title or the inclusion of such item in the tax title account." (As amended by St. 1936, c. 146, and St. 1941, c. 84, sec. 1.)

. . . . .

"SECTION 45. The collector shall execute and deliver to the purchaser a deed of the land, stating the cause of sale, the price for which the land was sold, the name of the person on whom the demand for the tax was made, the places where the notices were posted, the name of the newspaper in which the advertisement of the sale was published, and the residence of the grantee, and shall contain a warranty that the sale has in all particulars been conducted accord-

ing to law. The deed shall convey the land to the purchaser, subject to the right of redemption. The title thus conveyed shall, until redemption or until the right of redemption is foreclosed as hereinafter provided, be held as security for the repayment of the purchase price, with all intervening costs, terms imposed for redemption and charges, with interest thereon, and the premises conveyed, both before and after either redemption or foreclosure, shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto, and, except as provided in section seventy-seven, all covenants and agreements running with said premises either at law or in equity, when so conveyed. Such deed shall not be valid unless recorded within sixty days after the sale. If so recorded it shall be prima facie evidence of all facts essential to the validity of the title thereby conveyed, whether the deed was executed on or before as well as since July first, nineteen hundred and fifteen. No sale hereafter made shall give to the purchaser any right to possession of the land until the expiration of two years after the date of the sale." (As amended by St. 1938, c. 339, sec. 1.)

. . . . .

"SECTION 53. If a tax on land is not paid within fourteen days after demand therefor and remains unpaid at the date of taking, the collector may take such land for the town, first giving fourteen days' notice of his intention to exercise such power of taking, which notice may be served in the manner required by law for the service of subpoenas on witnesses in civil cases or may be published, and shall conform to the requirements of section forty. He shall also, fourteen days before the taking, post a notice so conforming in two or more convenient and public places." (As amended by St. 1933, c. 164, sec. 3.)

"SECTION 54. The instrument of taking shall be under the hand and seal of the collector and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the same was assessed, the amount of the tax thereon, and the incidental expenses and costs to the date of taking. Such an instrument of taking shall not be valid unless recorded within sixty days of the date of taking. If so recorded it shall be prima facie evidence of all facts essential to the validity of the title so taken, whether the taking was made on or before as well as since July first, nineteen hundred and fifteen. Title to the land so taken shall thereupon vest in the town, subject to the right of redemption. Such title shall, until redemption or until the right of redemption is foreclosed as hereinafter provided, be held as security for the repayment of said taxes with all intervening costs, terms imposed for redemption and charges, with interest thereon, and the premises so taken, both before and after either redemption or foreclosure, shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto, and, except as provided in section seventy-seven, all covenants and agreements running with said premises either at law or in equity, when so taken." (As amended by St. 1938, c. 339, sec. 2.)

. . . . .

"SECTION 64. The title conveyed by a tax collector's deed or by a taking of land for taxes shall be absolute after foreclosure of the right of redemption by decree of the land court as provided in this chapter. The land court shall have exclusive jurisdiction of the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed or a taking of land for taxes, in a proceeding provided for in sections sixty-five to seventy-five, inclusive.

"SECTION 65. After two years from a sale or taking of land for taxes, except as provided in section sixty-two, whoever then holds the title thereby acquired may bring a petition in the land court for the foreclosure of all rights of redemption thereunder. Such petition shall be made in the form to be prescribed by said court and shall set forth a description of the land to which it applies, with its assessed valuation, the petitioner's source of title, giving a reference to the place, book and page of record, and such other facts as may be necessary for the information of the court. Two or more parcels of land may be included in any petition brought by a town, whether under a taking or as purchaser of such title or titles, if such parcels are in the same record ownership at the time of bringing such petition." (As amended by St. 1938, c. 305.)

. . . . .

"SECTION 68. Any person claiming an interest, on or before the return day or within such further time as may on motion be allowed by the court, shall, if he desires to redeem, file an answer setting forth his right in the land, and an offer to redeem upon such terms as may be fixed by the court. Thereupon the court shall hear the parties, and may in any case in its discretion make a finding allowing the party to redeem, within a time fixed by the court, upon payment to the petitioner of an amount sufficient to cover the original sum, costs, interest at the rate of six and one half per cent per annum, and all subsequent taxes, costs and interest to which the petitioner may be entitled under section sixty-one or sixty-two, together with the costs of the proceeding and such counsel fee as the court deems reasonable. The court may impose such other terms as justice and the circumstances warrant.

"If the land has been divided by sale, mortgage, upon a petition for partition or otherwise and such division has

been duly recorded in the registry of deeds, the court may permit redemption of any of the portions into which the land has been divided, upon such terms as it may deem just and equitable toward all parties and may make a decree under section sixty-nine barring redemption of the remaining portions." (As amended by St. 1935, c. 414, sec. 3.)

"SECTION 69. If a default is entered under section sixty-seven, or if redemption is not made within the time and upon the terms fixed by the court under the preceding section, or if at the time fixed for the hearing the person claiming the right to redeem does not appear to urge his claim, or if upon hearing the court determines that the facts shown do not entitle him to redeem, a decree shall be entered which shall forever bar all rights of redemption." (As amended by St. 1935, c. 224, sec. 4.)

#### CHAPTER 185.

"SECTION 1. The land court shall be a court of record. It shall have exclusive original jurisdiction of the following matters:

. . . . .

"(b) Proceedings for foreclosure of and for redemption from tax titles under chapter sixty." (As amended by St. 1935, c. 318, sec. 3.)